

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Frank Lesinski, :
Plaintiff, :
v. : Case No. 2:03-cv-0932
City of Steubenville, Ohio, : JUDGE HOLSCUH
et al., :
Defendants.

ORDER

This case is before the Court to consider plaintiff's motion for leave to amend his complaint. Responsive and reply memoranda have been filed. For the following reasons, the motion will be granted.

The issue relating to the proposed amended complaint can be dealt with summarily. As clarified by his reply memorandum, plaintiff wishes to add, or to plead more specifically, causes of action under §1983 for unlawful seizure pursuant to the Fourth Amendment and malicious prosecution or prosecution without probable cause. Defendant asserts that the latter cause of action is not independently recognized when it arises out of the same claims giving rise to a Fourth Amendment unlawful seizure claim. Defendant is simply wrong.

For a brief period of time, the Sixth Circuit had concluded that no independent cause of action under §1983 was available for a claim of malicious prosecution. See Frantz v. Village of Bedford, 245 F.3d 849 (6th Cir. 2001). However, the Frantz decision was in conflict with an earlier decision in Spurlock v. Satterfield, 167 F.3d 995 (6th Cir. 1999), and, as explained in Darrah v. City of Oak Park, 255 F.3d 301 (6th Cir. 2001), the Court was required to follow its earlier precedent. That

interpretation of the history of the Sixth Circuit's opinions on this issue is confirmed by one of the two cases defendant cites in support of its position, Thacker v. City of Columbus, 328 F.3d 244 (6th Cir. 2003). Because Thacker specifically recognized that a cause of action for malicious prosecution or prosecution without probable cause can be pleaded under §1983, the Court is somewhat puzzled by defendant's citation of that case as authority for exactly the contrary proposition.

The other case cited by defendant is Harless v. City of Columbus, 183 F.Supp. 2d 1024 (S.D. Ohio 2002) (Marbley, J.). However, Harless relied on Frantz. In a subsequent decision, Judge Marbley recognized that Frantz was no longer good law and that the result reached in Harless was incorrect. Collins v. Guinther, 238 F.Supp. 2d 958 (S.D. Ohio 2002). The failure of defendant to cite this subsequent opinion by the same Judge who authored Harless is equally puzzling.

Most recently, the District Judge assigned to this case, Judge Holschuh, has recognized that an independent cause of action for malicious prosecution can be pleaded under §1983. Simms v. Athens County Sheriff's Office, 2005 WL 2233232 (S.D. Ohio Sept. 14, 2005). Clearly, that is the law. Consequently, there is no basis for defendant's opposition to the motion for leave to amend.

Based upon the foregoing, plaintiff's motion for leave to amend (file doc. #37) is granted. An amended complaint shall be filed within 15 days of the date of this order.

Any party may, within ten (10) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to

objections are due ten days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp
United States Magistrate Judge